

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARRINGTON DEWAYNE GREEN,

Defendant.

Case No. 08-cr-00045-PJH-1

**ORDER DENYING MOTION TO STAY**

Re: Dkt. No. 28

The government has filed a motion to stay the motion of defendant Arrington Dewayne Green to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 under the holding of *Johnson v. United States*, 135 S. Ct. 2551 (2015). The government seeks a stay of the § 2255 motion on the ground that the Supreme Court granted certiorari in *Beckles v. United States*, No. 15-8544, which presents issues raised in defendant's § 2255 motion in light of the holding of *Johnson*, where the Court held unconstitutionally vague the residual clause of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(2)(B)(ii) (defining "violent felony" to include an offense that "otherwise involves conduct that presents a serious potential risk of physical injury to another"). The ACCA residual clause invalidated in *Johnson* is identical to the residual clause of the definition of "crime of violence" in the career offender guidelines, U.S.S.G. § 4B1.2(a)(2). The Supreme Court granted certiorari review in *Beckles* on the questions whether *Johnson* applies retroactively to collateral cases challenging federal sentences enhanced under the residual clause in U.S.S.G. § 4B1.2(a)(2), and whether *Johnson's* constitutional

1 holding applies to the residual clause in U.S.S.G. § 4B1.2(a)(2), thereby rendering  
2 challenges to sentences enhanced under it cognizable on collateral review.

3 The government represents that *Beckles* will likely decide the application of  
4 *Johnson* to the Guidelines and the retroactivity question presented in defendant's § 2255  
5 motion. Doc. no. 28. Defendant promptly filed an opposition to the motion to stay,  
6 emphasizing that he would be prejudiced by a stay of his § 2255 motion because if he is  
7 granted relief on his *Johnson* claim, he could be resentenced to time served. Doc. no.  
8 29. He was sentenced on July 11, 2008, to 144 months imprisonment for a conviction on  
9 two counts of distribution of cocaine base. Without the career offender enhancement, he  
10 contends that his guideline range would have been 77-96 months. He argues that even  
11 with a high-end corrected guideline sentence of 96 months, he is overserving his  
12 custodial term.

13 In support of his opposition to the stay, defendant cites *Yong v. I.N.S.*, 208 F.3d  
14 1116 (9th Cir. 2000), where the Ninth Circuit held that the district court abused its  
15 discretion by staying a habeas petition pending resolution of an appeal in a case before  
16 the Ninth Circuit presenting similar issues to be decided, *Ma v. Reno*, 208 F.3d 815 (9th  
17 Cir. 2000), *vacated by Zadvydas v. Davis*, 533 U.S. 678 (2001). In reviewing the stay  
18 order, the Ninth Circuit noted that "because the stay terminates upon the 'resolution of  
19 the [*Ma*] appeal,' if the Supreme Court should grant certiorari to review this court's  
20 decision in *Ma*, the stay could remain in effect for a lengthy period of time, perhaps for  
21 years if our decision in *Ma* is reversed and the case is remanded for further proceedings."  
22 *Id.* at 1119. The court in *Yong* reasoned that "habeas proceedings implicate special  
23 considerations that place unique limits on a district court's authority to stay a case in the  
24 interests of judicial economy," and held that "although considerations of judicial economy  
25 are appropriate, they cannot justify the indefinite, and potentially lengthy, stay imposed  
26 here." *Id.* at 1120-21. To support his argument that a stay pending *Beckles* is not  
27 warranted, defendant filed a supplemental brief on August 3, 2016, indicating that the  
28 Ninth Circuit lifted the stays previously entered in *Gardner v. United States*, No. 15-72559

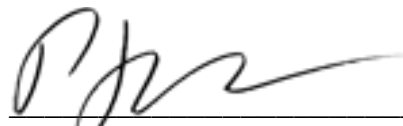
1 and *Jacob v. United States*, No. 15-73302 (9th Cir. Aug. 1, 2016), which the government  
2 cited in support of the instant motion to stay.

3 The court carefully considers whether a stay pending resolution of *Beckles* is likely  
4 to be resolved without inordinate delay because of the court's duty to adjudicate habeas  
5 petitions in a timely manner. *Yong*, 208 F.3d at 1119-20. Because a decision in *Beckles*  
6 is expected within a year, the government does not seek an indefinite stay. Unlike the  
7 appeal at issue in *Yong* which was subject to further review, the Supreme Court is likely  
8 to decide conclusively the question presented in *Beckles* whether *Johnson* applies  
9 retroactively to collateral challenges to sentence enhancements applied under the  
10 residual clause of the guidelines. Staying these proceedings pending a decision by the  
11 Supreme Court on this threshold question could, however, result in prejudicial delay to  
12 defendant, who seeks a reduced term of imprisonment that may be exceeded by time  
13 served. Under these circumstances, considerations of judicial economy are outweighed  
14 by the potential prejudice to defendant, and a stay is not warranted.

15 Accordingly, the government's motion to stay the § 2255 motion is DENIED.

16 **IT IS SO ORDERED.**

17 Dated: August 10, 2016



18  
19 PHYLLIS J. HAMILTON  
United States District Judge